

I. BACKGROUND

A. Transferor/Assignor Parties to the Proposed Transaction

1. Stanford Springel as Chapter 11 Trustee (“Mr. Springel” or “Chapter 11 Trustee”)

Mr. Springel is the seller in the Proposed Transaction. On October 4, 2007, the Bankruptcy Court entered an order appointing Mr. Springel as Chapter 11 Trustee for the bankruptcy estate of New ICC.¹ On April 9, 2009, the Bankruptcy Court authorized the Chapter 11 Trustee and CFC to seek, among other things, regulatory approvals (including Commission approvals) for the Proposed Transaction.² Mr. Springel is a Managing Director of Alvarez & Marsal North America, LLC (“A&M”)—a global financial advisory services firm headquartered in New York City—where he specializes in corporate restructuring and turnaround work. Mr. Springel individually, and not the firm of A&M, serves as Chapter 11 Trustee. He is a U.S. citizen with his principal place of business in San Francisco, California.

2. Innovative Communication Corporation, Debtor (“New ICC”)

New ICC is principally a holding company for telecommunications and cable television businesses located in the U.S. Virgin Islands.³ New ICC is a U.S. Virgin Islands corporation

¹ Order Approving Selection of Trustee, Case No. 07-30012 (Bankr. V.I., entered Oct. 4, 2007).

² Interim Order (A) Approving Sale of Group 1 Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (C) Granting Related Relief, Case No. 07-30012 (Bankr. V.I., entered Apr. 9, 2009) (“Interim Sale Order”).

³ The short-form name “New ICC” reflects the fact that New ICC’s corporate predecessor-in-interest was also named Innovative Communication Corporation. *See* Reorganization Agreement by and between Innovative Communication Corporation (“Transferor” or “Old ICC”) and Atlantic Tele-Network Co. (“Transferee” or “New ICC”), attached as Exhibit A to Exhibit 2 of the Involuntary Chapter 11 Petition, Case No. 07-30012 (Bankr. V.I., filed July 5, 2007). The Transferee acquired all of the Transferor’s assets and later renamed itself Innovative Communication Corporation.

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headquartered on St. Croix, U.S. Virgin Islands. New ICC relies on the Commission's blanket domestic Section 214 authorization and holds an international Section 214 authorization, broadband PCS licenses, advanced wireless services ("AWS") licenses, and common carrier point-to-point microwave licenses. In addition to its activities as a holding company, New ICC operates two business divisions: (1) IBS (discussed below), and (2) VI PowerNet, an Internet services provider in the U.S. Virgin Islands. New ICC was placed into involuntary Chapter 11 bankruptcy by the Bankruptcy Court on July 5, 2007.⁴ Judge Judith Fitzgerald entered the Order for Relief on September 21, 2007, in New ICC's bankruptcy case. On October 4, 2007, the Bankruptcy Court appointed the Chapter 11 Trustee to manage the New ICC bankruptcy estate.

B. Other Operating Entities Related to the Proposed Transaction

1. Innovative Business Systems Division of New ICC ("IBS")

IBS is a provider of telephone key systems, peripheral equipment, inside wiring and maintenance contracts to businesses and governmental entities in the U.S. Virgin Islands. Until September 2008, IBS provided pay telephone services on a small scale. IBS is an operating division of New ICC but is not separately incorporated. IBS is headquartered on St. Thomas. Following consummation of the Proposed Transaction, IBS assets will be owned by VIPN (as defined below).

2. Innovative Long Distance, Inc. ("ILD")

ILD is a telecommunications carrier providing interstate and international services to and from the U.S. Virgin Islands. ILD is a U.S. Virgin Islands corporation headquartered on St.

⁴ New ICC became a Debtor-in-Possession entity after the petition for relief was filed. With the appointment of the Chapter 11 Trustee, New ICC became a Trustee-in-Possession entity. For the sake of simplicity, the term New ICC is used to refer to pre-bankruptcy New ICC as well as New ICC Debtor-in Possession and New ICC Trustee-in-Possession.

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Thomas. ILD is a direct subsidiary of New ICC but is not, itself, in bankruptcy. ILD relies on blanket wireline authority pursuant to 47 C.F.R. § 63.01. Following consummation of the Proposed Transaction, ILD will be a direct, wholly-owned subsidiary of CFC USVI Holdco (as defined below).

3. Virgin Islands Telephone Corporation d/b/a Innovative Telephone (“Vitelco”)

Vitelco is the incumbent local exchange carrier in the U.S. Virgin Islands. Vitelco is a U.S. Virgin Islands corporation headquartered on St. Thomas. Vitelco is a direct subsidiary of New ICC but is not, itself, in bankruptcy. Vitelco relies on blanket wireline authority to provide exchange access services, pursuant to 47 C.F.R. § 63.01, and holds common carrier point-to-point microwave, industrial/business pool-conventional, and paging and radiotelephone licenses. Following consummation of the Proposed Transaction, Vitelco will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

4. Vitelcom Cellular, Inc., d/b/a/ Innovative Wireless (“Innovative Wireless”)

Innovative Wireless is a commercial mobile radio services (“CMRS”) carrier operating in the U.S. Virgin Islands. Innovative Wireless is a U.S. Virgin Islands corporation headquartered on St. Thomas. Innovative Wireless is a direct subsidiary of New ICC but is not, itself, in bankruptcy. Innovative Wireless is the holder of international Section 214 authorizations and cellular licenses. Following consummation of the Proposed Transaction, Innovative Wireless will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

5. Caribbean Communications Corp., d/b/a Innovative Cable TV - St. Thomas - St. John (“Innovative Cable STT-STJ”)

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Innovative Cable STT-STJ is the principal cable operator on the islands of St. Thomas and St. John, in the U.S. Virgin Islands, and operates a cable system on each island. Innovative Cable STT-STJ is a U.S. Virgin Islands corporation headquartered on St. Thomas. Innovative Cable STT-STJ is a direct subsidiary of New ICC but is not, itself, in bankruptcy. Innovative Cable STT-STJ holds cable television service relay service (“CARS”) licenses and a receive-only satellite earth station authorization. Following consummation of the Proposed Transaction, Innovative Cable STT-STJ will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

6. St. Croix TV, Inc., d/b/a Innovative Cable TV St. Croix (“Innovative Cable STX”)

Innovative Cable STX is the principal cable operator on the island of St. Croix, in the U.S. Virgin Islands. Innovative Cable STX is a U.S. Virgin Islands corporation headquartered on St. Croix. Innovative Cable STX is a direct subsidiary of New ICC but is not, itself, in bankruptcy. Innovative Cable STX holds an industrial/business pool-conventional license. Following consummation of the Proposed Transaction, Innovative Cable STX will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

7. ICC TV, Inc. d/b/a ICC TV2 (“TV2”)

TV2 is a local cable channel featuring original and syndicated programming of interest to residents of the U.S. Virgin Islands. TV2 is a U.S. Virgin Islands corporation headquartered on St. Thomas. TV2 is a direct subsidiary of New ICC but is not, itself, in bankruptcy. TV2 holds CARS licenses. Following consummation of the Proposed Transaction, TV2 will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

8. Group B-200, Inc. (“Group B-200”)

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Group B-200 owns an airplane used by the personnel of certain subsidiaries of New ICC to conduct business on the various Caribbean islands where such subsidiaries operate. Group B-200 is a Puerto Rico corporation headquartered on St. Croix. Group B-200 is a direct subsidiary of New ICC, but is not, itself, in bankruptcy. Group B-200 holds an aircraft license. Following consummation of the Proposed Transaction, Group B-200 will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

9. Atlantic Aircraft, Inc. (“Atlantic Aircraft”)

Atlantic Aircraft provides aviation services to certain New ICC subsidiaries in connection with the aircraft owned by Group B-200. Atlantic Aircraft is a U.S. Virgin Islands corporation headquartered on St. Croix. Atlantic Aircraft is a direct subsidiary of New ICC, but is not, itself, in bankruptcy. Atlantic Aircraft holds an aeronautical and fixed license. Following consummation of the Proposed Transaction, Atlantic Aircraft will be a direct, wholly-owned subsidiary of CFC USVI Holdco.

C. Transferee/Assignee Parties to the Proposed Transaction

1. National Rural Utilities Cooperative Finance Corporation (“CFC”)

CFC (acting through its special purpose subsidiaries) is the purchaser in the Proposed Transaction. As noted above, on April 9, 2009, the Bankruptcy Court authorized, among other things, the Chapter 11 Trustee and CFC to seek regulatory approvals (including Commission approvals) for the Proposed Transaction. CFC is a privately-owned, non-governmental cooperative financial institution that provides financial products and services to its member-owners. As of fiscal year-end 2008, CFC and its consolidated affiliates had 1,538 members in 49 states, the District of Columbia, and two U.S. territories. CFC’s consolidated membership consists of 898 electric utility systems (including distribution systems and generation-and-

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transmission systems), 511 telecommunications providers, 66 statewide and regional service organizations, and 63 associates. CFC is organized under the laws of the District of Columbia and headquartered in Herndon, Virginia. As of fiscal year-end 2008, CFC's total gross loans and guarantees outstanding were \$20.1 billion, and its owners had invested more than \$3.8 billion in CFC securities. CFC debt has investment-grade ratings from the three major credit-rating agencies.

2. Rural Telephone Finance Cooperative ("RTFC")

RTFC is the principal lender to New ICC.⁵ It is also the principal secured creditor of debtor New ICC in the ongoing Chapter 11 proceedings before the Bankruptcy Court. As of February 20, 2009, the unpaid balance of the RTFC claim (*i.e.*, debt) against New ICC was \$496,867,899.⁶ By the time of consummation of the Proposed Transaction, RTFC will have consummated an assignment to certain special-purpose subsidiaries of CFC of its acquisition rights under the Purchase Agreement between RTFC and the Chapter 11 Trustee. Consequently, CFC (not RTFC) seeks to consummate the acquisition of certain of the New ICC assets and subsidiaries.

RTFC is a privately-owned, non-governmental, not-for-profit lending cooperative that provides financial products and services to its 511 members, all of whom are rural telecommunications companies. RTFC is organized under the laws of the District of Columbia

⁵ In addition to making loans directly to New ICC, RTFC has made loans to its subsidiary, Vitelco. The loans made to Vitelco were subsequently repaid to RTFC through new funds acquired from a loan from the Rural Utilities Service ("RUS").

⁶ Summary by Category of Trustee's Receipts and Disbursements in New ICC from October 15, 2007 Through February 20, 2009, Case No. 07-30012, at 4 (Bankr. V.I., filed Mar. 2, 2009) ("Disbursement Summary").

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and headquartered in Herndon, Virginia. As of fiscal year-end 2008, RTFC had more than \$2 billion in outstanding loans.

RTFC is governed by a 10-member board of directors elected from its membership, and its board is entirely separate and independent of CFC's board. Nevertheless, CFC plays two critical roles with respect to RTFC. *First*, CFC funds RTFC, providing a reliable source of financing through CFC's access to capital markets. *Second*, RTFC has entered into a management and other agreements with CFC, whereby CFC manages RTFC's day-to-day operations at the behest of RTFC's board. For financial reporting purposes, RTFC's results are consolidated with those of CFC.

3. Caribbean Asset Holdings, LLC ("CFC Holdco")

CFC Holdco is the umbrella holding company created by CFC for purposes of acquiring the stock and assets of subsidiaries and businesses in the U.S. Virgin Islands, the British Virgin Islands, and the Netherlands Antilles. CFC Holdco is a Delaware limited-liability company headquartered in Herndon, Virginia. CFC is CFC Holdco's sole member. CFC Holdco, in turn is (a) the sole member of DTR Holdings, LLC ("CFC USVI Holdco," organized to hold CFC Holdco's interests in the U.S. Virgin Islands), (b) the sole member of BVI Asset Holdings, LLC ("CFC BVI Holdco," organized to hold CFC Holdco's interests in the British Virgin Islands), and (c) the sole member of STM Asset Holdings, LLC ("CFC St. Maarten Holdco," organized to hold CFC Holdco's interests in the Netherlands Antilles). Upon consummation of the Proposed Transaction, CFC Holdco will be the direct or indirect, 100-percent voting- and equity-interest holder in each of the entities described in part 1.B above.

4. DTR Holdings, LLC ("CFC USVI Holdco")

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Upon consummation of the Proposed Transaction, CFC USVI Holdco will hold and manage CFC Holdco's interests in the U.S. Virgin Islands. CFC USVI Holdco is also the proposed assignee for the international Section 214 authorization of New ICC. CFC USVI Holdco is a U.S. Virgin Islands limited-liability company organized to hold CFC Holdco's interests in the U.S. Virgin Islands and is headquartered in Herndon, Virginia. CFC Holdco is CFC USVI Holdco's sole member. Upon consummation of the Proposed Transaction, CFC USVI Holdco will hold directly the stock and assets of New ICC subsidiaries and businesses in the U.S. Virgin Islands, as well as the international Section 214 authorization presently held by New ICC.

5. VI PowerNet, LLC ("VIPN")

VIPN is the assignee for IBS's domestic common-carrier transmission lines. VIPN is a U.S. Virgin Islands limited-liability company headquartered in Herndon, Virginia. CFC USVI Holdco is VIPN's sole member. Upon consummation of the Proposed Transaction, VIPN will own and operate the assets of New ICC's IBS operating division.⁷

D. Bankruptcy and Related Proceedings

Between 1987 and 2001, RTFC made loans to New ICC, with perfected security interests in almost all of the assets of New ICC and its subsidiaries. New ICC defaulted on those loans in 2004, and RTFC obtained a civil judgment against New ICC for \$524,910,065.⁸ New ICC failed to repay that judgment and other third-party debts.

⁷ Post-consummation, VIPN will also own and operate the assets of New ICC's VI PowerNet operating division, an Internet service provider, the sale of whose assets is not subject to Commission review or approval.

⁸ Final Judgment, *RTFC v. ICC* and *RTFC v. Jeffrey Prosser*, Case Nos. 2004-CV-154 and 2004-CV-155 (D. V.I., entered June 9, 2006) (entering judgment in favor of RTFC).

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On September 21, 2007, the Bankruptcy Court entered an Order for Relief in New ICC's bankruptcy case. None of New ICC's subsidiaries are currently in bankruptcy or the subject of a pending bankruptcy petition. On October 3, 2007, the Bankruptcy Court granted a motion for the appointment of a Chapter 11 trustee in the New ICC case.⁹ On October 4, 2007, the Bankruptcy Court entered an order appointing Mr. Springel as Chapter 11 Trustee for the bankruptcy estate of New ICC.¹⁰ RTFC is the principal secured creditor of New ICC, having filed a proof of claim in the amount of its outstanding civil judgment.¹¹

New ICC was previously owned and controlled by Mr. Jeffrey J. Prosser through two intermediate holding companies: Innovative Communication Company, LLC ("ICC-LLC") and Emerging Communications, Inc. ("EmCom"). ICC-LLC and EmCom are also in Chapter 11 bankruptcy proceedings, and the Bankruptcy Court has appointed Mr. Springel as Chapter 11 trustee for each of the bankruptcy estates of ICC-LLC and EmCom.¹² Mr. Prosser is also in Chapter 7 bankruptcy, and the Bankruptcy Court has appointed Mr. James P. Carroll as Chapter 7 trustee to oversee liquidation of Mr. Prosser's personal estate.¹³ Mr. Springel notified the

⁹ Order Requiring U.S. Trustee to Immediately Appoint a Chapter 11 Trustee, Case No. 07-30012 (Bankr. V.I., entered Oct. 3, 2007).

¹⁰ Order Approving Selection of Trustee, Case No. 07-30012 (Bankr. V.I., entered Oct. 4, 2007).

¹¹ Proof of Claim of the Rural Telephone Finance Cooperative, Case No. 07-30012 (Bankr. V.I., filed Feb. 8, 2008).

¹² Order Determining that Venue Is Proper in the District Court for the District of the Virgin Islands Bankruptcy Division, Case No. 06-30007 (Bankr. V.I., entered Dec. 14, 2006) ("Venue Order"); Order of Court Granting Motion to Appoint Trustee, Case No. 06-30007 (Bankr. V.I., entered Feb. 13, 2007) (granting the U.S. Trustee's motion for the appointment of a Chapter 11 trustee in the ICC-LLC and EmCom cases); Order Appointing Stan Springel as Chapter 11 Trustee, Case No. 06-30007 (Bankr. V.I., entered Mar. 15, 2007).

¹³ Order Converting Case to Chapter 7, Case No. 06-30009 (Bankr. V.I., entered Oct. 3, 2007) (converting Mr. Prosser's voluntary Chapter 11 bankruptcy to an involuntary Chapter 7

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Commission of these proceedings.¹⁴ In that letter and in subsequent filings, Mr. Springel also notified the Commission of the consequent *pro forma* transfers of control and assignments.¹⁵

Consequently, New ICC operates under the direct and ultimate control of Mr. Springel as Chapter 11 Trustee.¹⁶ Mr. Springel, in turn, answers directly to the Bankruptcy Court with respect to his administration of the New ICC bankruptcy estate. The currently unsold assets of the New ICC bankruptcy estate consist of what are known as the “Group 1 Assets”: telecommunications and cable television businesses in the U.S. Virgin Islands, the British Virgin Islands, and the Netherlands Antilles.¹⁷

liquidation); Order Resolving Trustee Election Dispute, Case No. 06-30009 (Bankr. V.I., entered Oct. 31, 2007) (appointed Mr. Carroll as Chapter 7 Trustee of Mr. Prosser’s bankruptcy estate).

¹⁴ Letter from Stanford Springel, Chapter 11 Trustee, to FCC Secretary Marlene H. Dortch *et al.* (filed Dec. 31, 2008).

¹⁵ See *id.*; see also Application Transfer of Control of CARS Licenses, File Numbers CAR-20090223AA-09, CAR-20090223AB-09, CAR-20090223AC-09, CAR-20090223AD-09, CAR-20090223AE-09 (filed Jan. 28, 2009); Application for Transfer of Control of CARS Licenses, File Numbers CAR-20090213AE-09, CAR-20090213AF-09 (filed Jan. 28, 2009); Application for Transfer of Control of Industrial/Business Pool, Conventional license, ULS File No. 003706786 (filed Jan. 29, 2009); Application to Assign PCS broadband license and Common Carrier Fixed Point-to-Point Microwave Licenses, ULS File No. 0003722992 (filed Feb. 3, 2009); Application to Assign Advanced Wireless Services licenses, ULS File No. 003722992 (filed Feb. 3, 2009); Application to Transfer Control of Paging and Radiotelephone License, Common Carrier Fixed point-to-Point Microwave Licenses, and Industrial/Business Pool, Conventional License, ULS File No. 0003722975 (filed Feb. 3, 2009); Application to Transfer Control of Cellular Licenses, ULS File No. 0003722958 (filed Feb. 3, 2009).

¹⁶ See, e.g., Order (I) Denying the Amended Application Seeking Retention and Employment of Adam Hoover and (II) Striking All Unauthorized Filings Made by Adam Hoover from the Record, Case No. 07-30012, at 2 (Bankr. V.I., entered Nov. 26, 2007) (finding that “Stan Springel was appointed chapter 11 trustee (the “Trustee”) of the Debtor on October 4, 2007 (07-30012 DE 125). Upon his appointment, the Trustee became the sole person with legal authority to speak for and take actions on behalf of the Debtor.”).

¹⁷ Previously, the Chapter 11 Trustee obtained Bankruptcy Court approval to sell what were known as the “Group 2 Assets”—principally cable television companies in the French

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E. The Proposed Transaction

In April 2008 the Chapter 11 Trustee began to market New ICC's assets to potential third-party acquirers. On January 30, 2009, the Chapter 11 Trustee received a purchase offer in the form of a credit bid of not less than \$250,000,000 from RTFC for certain assets. Under Section 363 of the Bankruptcy Code, the bankruptcy trustee may sell a debtor's assets outside the ordinary course following notice and a hearing.¹⁸ Section 363(k) of the U.S. Bankruptcy Code permits a creditor to bid up to the full amount of its secured-debt claim in order to acquire the assets to which its liens are attached in exchange for cancellation of indebtedness in the amount of the bid.¹⁹ The Trustee, in his business judgment, deemed the RTFC credit bid to be the "highest and best" bid.

On March 13, 2009, the Chapter 11 Trustee and RTFC signed a stock and asset purchase agreement to implement RTFC's credit bid.²⁰ In the Purchase Agreement, the Chapter 11 Trustee agreed to RTFC's credit bid in the amount of \$250 million.²¹

overseas territories of Guadeloupe and Martinique as well as metropolitan France. *See* Order Approving Sale of Certain Estate Common Stock and Receivables Free and Clear of Liens, Claims, Encumbrances, and Other Interests: (II) Authorizing Trustee to Consummate Sale and Related Transactions; and (III) Granting Related Relief, Case No. 07-30012 (Bankr. V.I., entered Dec. 19, 2008). The sale of the Group 2 Assets was consummated on December 24, 2008. In addition, the Chapter 11 Trustee obtained Bankruptcy Court approval to sell what were known as the "Group 3 Assets" – consisting solely of the Virgin Islands Daily News, a daily newspaper in the U.S. Virgin Islands. The sale of the Group 3 Assets was consummated on June 7, 2008. The remaining assets—consisting of non-communications-related real and personal property—were sold in more piecemeal fashion during earlier stages of the New ICC bankruptcy.

¹⁸ 11 U.S.C. § 363(b)(1) (providing that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate").

¹⁹ *Id.* § 363(k).

²⁰ *See* Purchase Agreement by and between Stan Springel, as Seller solely in his capacity as chapter 11 trustee for the bankruptcy estate of Innovative Communication Corporation, as Debtor, and Rural Telephone Finance Cooperative, as Buyer (Mar. 13, 2009) ("Purchase

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On April 3, 2009, RTFC notified the Bankruptcy Court that, pursuant to Section 8.9 of the Purchase Agreement, it had designated CFC Holdco and CFC USVI Holdco as the purchaser entities with respect to the USVI businesses.²² RTFC designated CFC subsidiaries as the purchaser entities because CFC provided the funds that were originally loaned by RTFC to New ICC and its predecessor and such designations are otherwise consistent with agreements between RTFC and CFC. Prior to the consummation of the Proposed Transaction, RTFC will consummate assignments of its acquisition rights under the Purchase Agreement between RTFC and the Chapter 11 Trustee to certain special-purpose subsidiaries of CFC.

On April 9, 2009, the Bankruptcy Court entered the Interim Sale Order authorizing, among other things, the Chapter 11 Trustee and CFC to seek regulatory approvals from the Commission, the U.S. Virgin Islands Public Services Commission, the British Virgin Islands Government, and the Netherlands Antilles Government.²³ The Bankruptcy Court recognized that the following CFC entities, upon satisfaction of the closing conditions and receipt of all

Agreement”), *appended to* Supplemental Motion for Order (A) Approving Sale of All of the Debtor’s Primary Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief, Case No. 06-30012 (Bankr. V.I., filed Mar. 13, 2009).

²¹ Purchase Agreement § 2.3; Disbursement Summary at 4.

²² Notice of Designation of Buyer’s Assignees under Supplemental Motion for Order (A) Approving Sale of All of the Debtor’s Primary Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief, Case No. 07-30012 at 2-3 (Bankr. V.I., filed Apr. 3, 2009).

²³ Interim Sale Order at 5 (stating that “[t]he Motion is granted and the sale of the Assets to the Buyer is hereby authorized on an interim basis, and such authorization shall become final upon a finding by the Court at the Final Sale Hearing that (a) all U.S. and/or foreign regulatory approvals required to transfer the Assets under the Agreement have been obtained and (b) all other findings and rulings to be made by the Court, as set forth in the Agreement, have been made”).

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regulatory consents (or upon any waiver thereof), “shall be assigned the respective Assets upon the Closing:

Caribbean Asset Holdings, LLC shall be the (a) sole shareholder of DTR Holdings, Inc., a United States Virgin Islands corporation which shall be formed; (b) sole member of BVI Asset Holdings, LLC, a Delaware limited liability company which shall be formed; and (c) sole member of STM Asset Holdings, LLC, a Delaware limited liability company which shall be formed.

DTR Holdings, Inc. shall (a) be the sole shareholder of VI PowerNet, Inc., a United States Virgin Islands corporation which shall be formed to acquire the Assets comprising the VI PowerNet and Innovative Business Systems operating divisions of New ICC; (b) acquire New ICC’s licenses and authorizations (to the extent provided in the Agreement); (c) acquire all of New ICC’s interests in (which the Buyer intends to constitute all of) the shares of (i) Virgin Islands Telephone Corporation d/b/a Innovative Telephone, a United States Virgin Islands Corporation (ii) Caribbean Communications Corp., d/b/a Innovative Cable TV - St. Thomas - St. John, a United States Virgin Islands corporation, (iii) ICC, TV, Inc., d/b/a ICC TV2, a United States Virgin Islands corporation, (iv) Atlantic Aircraft, Inc., a United States Virgin Islands corporation, (v) Innovative Long Distance, Inc., a United States Virgin Islands corporation, (vi) Vitelcom Cellular, Inc. d/b/a Innovative Wireless, a United States Virgin Islands corporation (vii) St. Croix Cable TV, Inc., d/b/a Innovative Cable, a United States Virgin Islands corporation, and (viii) Group B-200, Inc., a Puerto Rico corporation.”²⁴

To assist the Commission in understanding and reviewing the Proposed Transaction and the consents sought therefor, the Applicants have included the following exhibits:

- Exhibit 2 lists the subject Commission licenses and authorizations.
- Exhibit 3 lists the FCC registration numbers for the Applicants.
- Exhibit 4 lists all applications filed with the Commission in connection with the Proposed Transaction.
- Exhibit 5 provides a pre-consummation organizational chart for New ICC and its subsidiaries, as they are currently controlled and operated by the Chapter 11 Trustee.

²⁴ *Id.* at 3.

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- Exhibit 6 provides a post-consummation organizational chart.
- Exhibit 7 provides the Interim Sale Order.

II. THE STANDARD OF REVIEW

Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (“Act”), require that the Commission determine whether the transfers of control and assignment of Commission licenses and authorizations in the Proposed Transaction are consistent with the public interest, convenience, and necessity.²⁵ The Commission considers four questions in making that assessment: “(1) whether the transaction would result in the violation of the Act or any other applicable statutory provision; (2) whether the transaction would result in a violation of Commission rules; (3) whether the transaction would substantially frustrate or impair the Commission’s implementation or enforcement of the Act or interfere with the objectives of that and other statutes; and (4) whether the transaction promises to yield affirmative public interest benefits.”²⁶

²⁵ See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Time Warner Inc.*, Memorandum Opinion and Order, 24 FCC Rcd. 879, 884-85 ¶ 10 (rel. Feb. 11, 2009); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,290, 18,300-01 ¶ 16 (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18,433, 18,442-43 ¶ 16 (2005); *Applications of Nextel Communications, Inc. and Sprint Corporation; For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd. 13,967, 13,976-77 ¶ 20 (2005); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,542-44 ¶ 40 (2004); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd. 473, 483 ¶ 15 (2004).

²⁶ *SBC Communications Inc. and BellSouth Corp.*, Memorandum Opinion and Order, 15 FCC Rcd. 25,459, 25,463-64 ¶ 13 (Wireless and Int’l Burs. 2000) (citation omitted); *Ameritech*

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The consummation of the Proposed Transaction will not violate the Act or any other statutory provision or Commission rule, nor will it substantially frustrate or impair the Commission's implementation or enforcement of the Act or interfere with the objectives of the Act or other statutes. To the contrary, as detailed below, the consummation of the Proposed Transaction will result in numerous public interest benefits while enhancing competition and should therefore be approved expeditiously by the Commission.

III. THE PROPOSED TRANSACTION WILL SERVE THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

The Proposed Transaction will serve the public interest, convenience, and necessity by facilitating the resolution of the bankruptcy of New ICC, supporting the objectives of the U.S. Bankruptcy Code, and permitting the continued and uninterrupted operation of the telecommunications and cable television businesses that comprise New ICC's USVI telecommunications and cable television businesses, to the benefit of their customers and the public.²⁷

A. The Proposed Transaction Will Ensure Continuity of Service for the Principal Providers of Telecommunications and Cable Television Services in the U.S. Virgin Islands

Corp. and SBC Communications Inc., Memorandum Opinion and Order, 14 FCC Rcd. 14,712, 14,737-38 ¶48 (1999).

²⁷ See *WorldCom, Inc. and its Subsidiaries (debtors-in-possession), Transferor, and MCI, Inc., Transferee, Applications for Consent to Transfer and/or Assign Section 214 Authorizations, Section 310 Licenses, and Submarine Cable Landing Licenses*, Memorandum Opinion and Order, 18 FCC Rcd. 26,484, 26,503, ¶ 29 (2003) ("*WorldCom Order*"); *Applications for the Consent to the Assignment and/or Transfer of Control of Licenses; Adelphia Communications Corporation, Time Warner Cable Inc., and Comcast Corporation*, Memorandum Opinion and Order, 21 FCC Rcd. 8203, 8323-24 ¶¶ 282-86 (2006).

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The Proposed Transaction will permit the principal providers of telecommunications and cable television services in the U.S. Virgin Islands to continue providing those services on an uninterrupted basis. In addition, the Proposed Transaction will provide New ICC's U.S. Virgin Islands telecommunications and cable television businesses with a solvent and stable ultimate parent that has deep and broad experience with rural utilities, including rural telephone companies.²⁸ The Commission has recognized the "economic and social benefits" of facilitating the emergence from bankruptcy of telecommunications providers, and has likewise found that enabling providers to continue to serve their customers without disruption benefits the public interest.²⁹

The benefits of continuity of service and improved solvency are particularly critical here because the relevant providers include the primary providers of local telephone, domestic and international interexchange service—and only remaining terrestrial provider (following Choice Cable TV's withdrawal from the U.S. Virgin Islands market) of multichannel video programming distributor services—in the U.S. Virgin Islands. New ICC and its operating subsidiaries have "limited capital" and "substantial indebtedness,"³⁰ and the ongoing bankruptcy of New ICC creates significant challenges for the operating subsidiaries, although operations have been stabilized and cash flow has increased in 2009. These improvements have allowed the

²⁸ See part I.C.1 above.

²⁹ *WorldCom Order* at 26,503 ¶ 29.

³⁰ Tr. Nov. 10, 2008 Hearing, Case No. 07-30012 at 78 (Bankr. V.I., filed Nov. 18, 2008) (Statement by James Lee, Counsel for Mr. Springel); see also Order for Relief in an Involuntary Case, Case No. 07-30012 (Bankr. V.I., entered Sept. 21, 2007) (granting order for relief under Chapter 11 of the Bankruptcy Code against Innovative Communication Corporation); Order Granting Greenlight's Motion for Summary Judgment and Entry of Order for Relief Pursuant to 11 U.S.C. § 303(h), Fed. R. Bankr. P. 1018 and 7056 and Fed. R. Civ. P. 56, Case No. 07-30012 (Bankr. V.I., entered Sept. 27, 2007) (finding "New ICC is not generally paying its debts as such debts become due.").

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operating entities to make some capital expenditures, albeit not at the level that would be needed to fully rehabilitate the entities. Rather than face potential liquidation themselves, or face further financial or legal uncertainty due to a further protracted bankruptcy of New ICC, the Proposed Transaction will eliminate such uncertainties for the affected businesses.

B. The Proposed Transaction Will Permit Rehabilitation of the Businesses

Consummation of the Proposed Transaction will permit the USVI telecommunications and cable television businesses to focus solely on their primary operations without the distractions and uncertainty created by the ongoing bankruptcy proceedings. However, unlike the pre-bankruptcy situation, the Trustee has stabilized the U.S. Virgin Islands companies, improving cashflow and making capital improvement investments. The Trustee has also assured that necessary maintenance of the network and other facilities was conducted. That said, given the limited positive cash flow, the condition of the businesses, and the lack of available third-party credit, the businesses are currently in a holding pattern, awaiting identification of a new owner to permit rehabilitation and reinvestment in those businesses and their infrastructure.

Consummation of the Proposed Transaction will facilitate their rehabilitation by improving access to capital, enabling the companies to focus on their core businesses, and allowing new investment. These steps will allow the companies to improve operations, evaluate their infrastructure and investment needs and plan for the provision of new and enhanced services. And, in fact, interim management has already initiated a network design study of the USVI telecommunications and cable businesses in order to determine how best to deploy network assets to support existing and future services.

C. The Proposed Transaction Will Improve Disaster Planning and Recovery

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The U.S. Virgin Islands are vulnerable to hurricanes and tropical storms. These natural disasters have, in the past, caused significant damage to New ICC's USVI telecommunications and cable television infrastructure. For example, in 2008, Hurricane Omar inflicted extensive network damage on Vitelco and Innovative Cable STX's networks on the island of St. Croix.³¹ The FCC has recognized the "financial strain resulting from the devastation inflicted by Hurricane Omar on Vitelco's telecommunications network."³² Prior to Omar, New ICC's telecommunications and cable television businesses suffered significant damage due to Hurricane Hugo (1988),³³ Hurricane Marilyn (1995),³⁴ and Hurricane Lenny (1999).³⁵

³¹ See, e.g., *FEMA approves additional \$1.3 million for USVI hurricane damage*, Caribbean Net News, April 9, 2009, at <http://www.caribbeannetnews.com/news-15568--19-19--.html>.

³² Letter from Julie A. Veach, Deputy Chief, Wireline Competition Bureau, Federal Communications Commission, to Scott Barash, Universal Service Administration Company (Feb. 27, 2009).

³³ Michael Wines, *Congress Votes Sharp Increase in Storm Relief*, N.Y. TIMES, Sep. 29, 1989, at <http://www.nytimes.com/1989/09/29/us/congress-votes-sharp-increase-in-storm-relief.html?sec=&spon=&pagewanted=all> ("On St. Croix, V.I., which has suffered extensive damage, shiploads of refrigerated food will rot if they are unloaded because virtually every utility pole was felled by the storm, knocking out power and telephones.").

³⁴ Rajiv Chandrasekaran, *Hurricane Kills 3 in U.S. Virgin Islands*, WASHINGTON POST, Sep. 17, 1995, at A8, available at <http://www.washingtonpost.com/wp-srv/national/longterm/hurricane/archives/marilyn95.htm> ("Relief efforts were hampered by a lack of phone service, lingering squalls and tons of debris that littered roads and the airports on St. Thomas and St. Croix, where the storm damaged control towers."); *Atlantic Tele- Network assesses impact of Hurricane Marilyn*, BUSINESS WIRE, Oct. 5, 1995 ("it will cost an estimated \$30 million to \$50 million to repair and replace the Virgin Islands Telephone Corp. (Vitelco) facilities damaged by Hurricane Marilyn").

³⁵ *U.S. declares state of emergency over Lenny damage*, CBC NEWS, Nov. 10, 2000, at <http://www.cbc.ca/world/story/1999/11/19/hurricane991119.html>; Wycliffe Richardson, *Hurricane Lenny wreaks havoc as it hits northeast Caribbean*, Associated Press, Nov. 19, 1999 ("Lenny's winds howled by, ripping away roofs and piers, washing away roads and cutting electricity and telephone service.").

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Damage from hurricanes and other natural disasters causes customer disruption and requires costly and time-consuming network repairs. CFC is committed to reviewing operational responses to disasters and taking operational steps needed to minimize customer disruption and network restoration costs after future disasters.

D. The Proposed Transaction Will Enhance Competition in the Provision of Wireline, Mobile and MVPD Services

The Proposed Transaction will enhance competition in the provision of wireline, mobile, and MVPD services by substantially strengthening the economic foundation of the telecommunications and cable companies being acquired. The Proposed Transaction will not create any new combinations in the USVI wireline, mobile/broadband, or MVPD markets, as CFC is neither a carrier nor an MVPD nor affiliated with a carrier or MVPD. The Proposed Transaction is therefore incapable of generating any anticompetitive vertical or horizontal effects. Instead, by enabling the telecommunications and cable companies to improve service and invest in infrastructure as described above, the Proposed Transaction will enhance competition by improving the quality of services available to USVI consumers and enabling New ICC's businesses to become more robust competitors.

In particular, the rehabilitation of New ICC's businesses will benefit wireless competition in the U.S. Virgin Islands. Innovative Wireless faces vigorous competition in the provision of wireless services from national providers AT&T Inc. (which is seeking FCC approval of the transfer of control to AT&T of licenses, authorizations, and *de facto* transfer spectrum and spectrum manager leasing arrangements held by Centennial Communications Corp. and its

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subsidiaries³⁶), T-Mobile USA, Inc. (which recently acquired SunCom Wireless Holdings, Inc.³⁷), and Sprint Nextel Corporation. In order to compete effectively with these national providers, Innovative Wireless must replace its antiquated TDMA/AMPS network. By providing stability and facilitating long-overdue investment in Innovative Wireless, including the investment necessary to allow needed network upgrades, the Proposed Transaction will dramatically enhance Innovative Wireless' ability to compete in this robust market.

IV. RELATED REQUESTS AND SHOWINGS

A. Related Governmental Filings

The Applicants intend to submit a pre-merger notification form and an associated documentary appendix to the U.S. Department of Justice and the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and associated regulations.³⁸ The Applicants also intend to submit to the U.S. Virgin Islands Public Services Commission, the Government of the British Virgin Islands (including the Ministry of Communications and Works and the Telecommunications Regulatory Commission), and the Netherlands Antilles Ministry of Transport and Communications the requisite applications for consent to transfer control of regulated businesses in those jurisdictions.

B. Other Licenses and Authorizations Included

³⁶ See *AT&T Inc. and Centennial Communications Corp. Seek FCC Consent to Transfer Control of Licenses, Leasing Arrangements, and Authorizations*, Public Notice, 23 FCC Rcd. 17,966 (2008).

³⁷ See *Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc.; For Consent to Transfer Control of Licenses and Authorizations and Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, Memorandum Opinion and Order, 23 FCC Rcd. 2515 (2008).

³⁸ 15 U.S.C. § 18a; 16 C.F.R. Subchapter H.

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As set forth in the Applications, New ICC's businesses hold numerous Commission licenses. The Applicants intend for the lists of call signs referenced in the Applications to be complete and to include all licenses held by the respective licensees that are subject to the Proposed Transaction.

One or more of New ICC's businesses may, however, have on file or may hereafter file with the Commission additional applications for licenses or authorizations for new or modified facilities or services, which may be granted or remain pending during the pendency of the Applications. Accordingly, the Applicants request that the grant of these Applications for consent to consummate the Proposed Transaction include authority for CFC to acquire control from the Chapter 11 Trustee of any authorizations, construction permits, or applications filed by any of New ICC's USVI businesses, including any authorization, construction permit, or application issued to any subsidiaries and affiliates during the pendency of this proceeding and during any subsequent period required to consummate the Proposed Transaction.³⁹

C. Unconstructed Facilities

With the exception of two particular licenses, the FCC licenses and authorizations covered by these Applications involve constructed facilities. The only exceptions are two AWS licenses, both of which authorize facilities which New ICC is not yet required to construct.⁴⁰ The assignment of these two licenses for unbuilt facilities is incidental to the Proposed Transaction, which does not entail any separate payment for any individual authorization or

³⁹ See *In re Applications of Craig O. McCaw and AT&T*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5909 ¶ 137 n.300 (1994).

⁴⁰ See AWS 1710-1755/2110-2155 MHz bands License, Call Sign WQGT832, Innovative Communication Corporation, Stan Springel, Chapter 11 Trustee; AWS 1710-1755/2110-2155 MHz bands License, Call Sign WQGT833, Innovative Communication Corporation, Stan Springel, Chapter 11 Trustee.

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facility. Consequently, the Applicants believe the proposed transaction is consistent with the Commission's anti-trafficking rules.⁴¹

D. Unjust Enrichment

None of the licenses or authorizations held by New ICC or its subsidiaries were obtained pursuant to set-asides or bidding credits for designated entities. Consequently, the unjust enrichment provisions of the Commission's auction rules do not apply.⁴²

E. Environmental Impact

As required by Section 1.923(e) of the Commission's rules, the Applicants state that the transfers of control of licenses and spectrum leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.⁴³

F. No Foreign Ownership Issues Under Section 310(b)

The Proposed Transaction is permissible under Section 310 of the Act because CFC, CFC Holdco, CFC USVI Holdco, and VIPN are not (1) aliens or representatives of any alien; (2) corporations organized under the laws of any foreign government; (3) corporations of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or (4) corporations directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned

⁴¹ See 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation"); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities provided that they are "incidental to the sale [of] other facilities or merger of interests.").

⁴² See 47 C.F.R. § 1.2111(b)-(d).

⁴³ See 47 C.F.R. §§ 1.1307, 1.923(e).

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of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country.⁴⁴ To the contrary, CFC, CFC Holdco, CFC USVI Holdco, and VIPN are entirely U.S.-owned and -controlled.

G. No Telco-Cable Cross-Ownership Issues

The Proposed Transaction is consistent with the buy-out prohibitions of Section 652 of the Communications Act of 1934, as amended.⁴⁵ *First*, Section 652 should not apply, as it is a prohibition on “buy outs” and, consequently, new combinations. The Proposed Transaction, however, will not involve a local exchange carrier or its affiliate buying a cable operator or vice versa. Moreover, the Proposed Transaction will not involve any new LEC-cable operator combination, as Vitelco, Innovative Cable STT-STJ, and Innovative Cable STX are already affiliates, and neither CFC nor any of its affiliates has any LEC or cable interests. *Second*, even if the Section 652 restrictions did apply, the continuing combination of Vitelco, Innovative Cable STT-STJ, and Innovative Cable STX would continue to qualify for the “small cable systems in nonurban areas” exception in Section 652(d), as Vitelco’s annual revenues are below \$100 million and the cable systems each have less than 20,000 subscribers.⁴⁶

H. Request for Permit-But-Disclose *Ex Parte* Status

The Applicants request that this proceeding be designated “permit-but-disclose” under the Commission’s rules controlling *ex parte* presentations.⁴⁷ Designation as a “permit-but-

⁴⁴ See 47 U.S.C. § 310.

⁴⁵ See 47 U.S.C. § 572 (“Section 652”).

⁴⁶ See 47 U.S.C. § 572(d). As of April 30, 2009, Innovative Cable STT-STJ’s St. Thomas system had 14,187 subscribers and its St. John system had 1,816 subscribers. As of April 30, 2009, Innovative Cable STX had 11,227 subscribers.

⁴⁷ 47 C.F.R. §§ 1.1200-1.1216.

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disclose” proceeding under Section 1.1206 would serve the public interest by facilitating the development of a complete record upon which a well-reasoned decision can be made.

I. Exemption from Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission’s Rules,⁴⁸ to the extent necessary,⁴⁹ the Applicants request a blanket exemption from any applicable “cut-off” rules in cases where New ICC or its subsidiaries files amendments to pending applications to reflect consummation of the Proposed Transaction. This exemption is requested so that amendments to pending applications to report the change in ultimate ownership of such licensees, which are parties to these Applications, would not be treated as major amendments, requiring a second public notice period. The scope of the transaction between CFC and the Chapter 11 Trustee demonstrates that any such ownership change would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of any such application would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.⁵⁰

⁴⁸ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), & 1.933(b).

⁴⁹ With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to any pending license modifications. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. *See Applications of Ameritech Corp., Transferor, and GTE Consumer Servs. Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd. 6667, 6668, ¶2 & n.6 (1999); *Applications of Comcast Cellular Holdings, Co., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd. 10,604, 10,605, ¶2 n.3 (1999).

⁵⁰ *See, e.g. Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*,

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Memorandum Opinion and Order, 12 FCC Rcd. 19,985, 20,091-092, ¶234 (1997); *Applications of PacifiCorp Holdings, Inc., Transferor, and Century Tel. Enters., Inc., Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 8891, 8915-16, ¶47 (1997); *Applications of Craig O. McCaw, Transferor, and AT&T Co., Transferee, For Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd. 5836, 5909, ¶137 & n.300 (1994).